

March 31, 2010

## INDIVIDUAL PRACTICES OF JUDGE CATHY SEIBEL

Unless otherwise ordered by Judge Seibel, matters before Judge Seibel shall be conducted in accordance with the following procedures:

### 1. Communications with Chambers

- A. **Letters.** Except as otherwise provided below, communications with chambers shall be by letter, with copies simultaneously delivered to all counsel. Letters shall not be filed unless the Court directs otherwise, and in an ECF case letters are not to be electronically filed. Copies of correspondence between counsel shall not be sent to the Court.
- B. **Telephone Calls.** Except as otherwise provided below, telephone calls to chambers are permitted only in situations requiring immediate attention. In such situations only, call chambers at 914-390-4271.
- C. **Faxes and Emails.** Faxes to chambers are permitted only if copies are also simultaneously faxed or delivered to all counsel. No document longer than five pages may be faxed without prior permission. The fax number is 914-390-4278. *If a document is faxed to Chambers, do NOT also send a hard copy.* If a party wishes to email a pdf document to the Court, it must obtain prior permission to do so. The email should indicate who in chambers provided such permission, and should be copied to all counsel.
- D. **Docketing, Scheduling, and Calendar Matters.** Please call Alice Cama, the Deputy Clerk, at 914-390-4077 between 9 a.m. and 5 p.m.
- E. **Requests for Adjournments or Extensions of Time.** All requests for adjournments or extensions of time shall be by letter and must state (1) the original date, (2) the number of previous requests for adjournment or extension, and the reason for those requests, (3) whether these previous requests were granted or denied, (4) the reason for the instant request, and (5) whether the adversary consents, and, if not, the reasons given by the adversary for refusing to consent. If the requested adjournment or extension affects any other scheduled dates, a proposed Revised Scheduling Order (reflecting only business days) must be attached. Absent extraordinary circumstances, request for extensions will be denied if not made before the expiration of the original deadline. If the request is for an adjournment of a court appearance, absent an emergency the request shall be made at least 48 hours prior to the scheduled appearance. Requests for extensions of deadlines regarding a matter that has been referred to a Magistrate Judge shall be directed to that assigned Magistrate Judge.

- F. Proposed Orders and Stipulations.** All proposed orders, and stipulations requiring the Court's signature, must be submitted directly to the Clerk. In ECF cases these documents must be sent by email to [wpclerk@nysd.uscourts.gov](mailto:wpclerk@nysd.uscourts.gov). Do not send courtesy copies to chambers.
- G. Courtesy Copies.** One (1) courtesy copy of all pleadings, motion papers (with the exception of motions for admission *pro hac vice*) and other documents filed via ECF shall be submitted at the time the papers are served. Courtesy copies should be prominently marked as such. Courtesy copies are required in both ECF and non-ECF cases. If hand-delivered, courtesy copies should be brought to the Clerk's Office on the first floor of the Courthouse, not to Chambers. If a document is filed only on ECF, without a courtesy copy to Chambers, it may not come to the Court's attention in a timely fashion.

## 2. Motions

### A. Pre-Motion Conference in Civil Cases.

For discovery motions, follow Local Civil Rule 37.2, requiring the moving party to request an informal conference with the Court before the filing of any such motion. Strict adherence to Fed. R. Civ. P. 37(a)(1), the "meet and confer" rule, is required. The parties should be prepared to describe the time, place and duration of the meeting, and to identify the counsel involved.

A pre-motion conference with the Court is required before making any other motion, except motions in cases involving incarcerated *pro se* litigants, motions for admission *pro hac vice*, motions for reargument or reconsideration, and motions for temporary restraining orders or preliminary injunctions. To arrange a pre-motion conference, the moving party shall submit a letter, not to exceed 3 pages, setting forth the basis for the anticipated motion. The opposing party shall submit a letter, also not to exceed 3 pages, setting forth its position within 3 business days from the service of the moving party's letter. Unless the parties are otherwise notified, pre-motion conferences will be held in the Courtroom, not Chambers. If a pre-motion conference is requested in connection with a proposed motion to dismiss, the request will stay the deadline for the requesting party to move or answer, and a new deadline will be set at the conference.

### B. Motion Papers.

- i. Unless prior permission has been granted, memoranda of law in support of and in opposition to motions are limited to 25 pages, and reply memoranda are limited to 10 pages. Memoranda of 10 pages or more shall contain a table of contents. All memoranda of law shall be in 12-point font or larger, with 1" margins on all sides. Sur-reply memoranda will not be accepted without prior permission of the Court.

- ii. All documents submitted in connection with motions must be bound in any manner that is secure, does not obscure the text, and permits the document to lie reasonably flat when open. Parties should submit multiple volumes rather than large documents that do not lie reasonably flat when open.

**C. Special Rules for Summary Judgment Motions**

- i. Except in *pro se* cases, the moving party shall provide all other parties with an electronic copy of the moving party's Statement of Material Facts Pursuant to Local Civil Rule 56.1. Opposing parties must reproduce each entry in the moving party's Rule 56.1 Statement, and set out the opposing party's response directly beneath it.
- ii. With respect to any deposition that is supplied, whether in whole or in part, in connection with a summary judgment motion, the index to the deposition should be included if it is available.
- iii. Except in *pro se* cases, the parties should provide the Court with an electronic, text-searchable courtesy copy of any hearing or deposition transcript, or portion thereof, on which the parties rely, if such a copy is available, unless doing so would be unduly burdensome. (Parties should provide these materials on a CD only, not on a DVD or memory stick and not by email.)

**D. Oral Argument on Motions.** Parties may request oral argument by letter at the time their moving or opposing or reply papers are filed. The Court will determine whether argument will be heard and, if so, will advise counsel of the date.

**3. Pretrial Procedures**

**A. Joint Pretrial Orders in Civil Cases.** Unless otherwise ordered by the Court, within 30 days after the date for completion of discovery in a civil case, or, if a dispositive motion has been filed, within 30 days of its decision, the parties shall submit to the Court for its approval a joint pretrial order, which shall include the information required by Fed. R. Civ. P. 26(a)(3) and following:

- i. The full caption of the action.
- ii. The names, addresses (including firm names), email addresses, and telephone and fax numbers of trial counsel.
- iii. A brief statement by plaintiff as to the basis of subject matter jurisdiction, and a brief statement by each other party as to the presence or absence of subject matter jurisdiction. Such statements shall include citations to all statutes relied on and relevant facts as to citizenship and jurisdictional

amount.

- iv. A brief summary by each party of the claims and defenses that party has asserted that remain to be tried, without recital of evidentiary matter but including citations to all statutes relied on. The parties shall also identify all claims and defenses previously asserted that are not to be tried.
- v. A statement by each party as to whether the case is to be tried with or without a jury, and the number of trial days needed.
- vi. A statement as to whether all parties have consented to trial of the case by a magistrate judge (without identifying which parties have or have not so consented).
- vii. Any stipulations or agreed statements of fact or law.
- viii. A list of the witnesses each party expects to call on its case in chief, including a very brief description of the witness's role and/or the subject matter of his or her anticipated testimony, and a statement as to whether any other party objects to the witness.
- ix. A designation by each party of deposition testimony to be offered in its case in chief, with any cross-designations and objections by any other party.
- x. A list by each party of exhibits to be offered in its case in chief, with one star indicating exhibits to which no party objects on grounds of authenticity, and two stars indicating exhibits to which no party objects on any ground.
- xi. A statement of damages claimed, itemizing each component or element of the damages sought with respect to each claim, including the manner and method used to calculate the claimed damages.
- xii. A statement as to whether the parties consent to a less than unanimous verdict.

**B. Filings Prior to Trial in Civil Cases.** Unless otherwise ordered by the Court, each party shall file the following documents 15 days before the date of commencement of trial if such a date has been fixed, or 30 days after the filing of the joint pretrial order if no date has been fixed:

- i. In jury cases, proposed *voir dire* questions, requests to charge and verdict form. The plaintiff's proposed *voir dire* questions should include an agreed-upon paragraph (designated as such) for the Court to use in *voir dire* to provide the jury panel with a brief explanation of the case. If the

parties cannot agree on such a paragraph after good-faith efforts, their respective proposed paragraphs (designated as such) should be set forth in their respective *voir dire* submissions. In addition to being filed in the normal manner, proposed jury instructions should be emailed to Judge Seibel's law clerk. Counsel should call chambers at 914-390-4271 to make arrangements for said emailing. Each proposed jury instruction must contain a citation to the source/authority for the proposed instruction, or the request will be disregarded.

- ii. In nonjury cases, proposed findings of fact and conclusions of law. Proposed findings of fact should be detailed, and proposed conclusions of law should include a statement of the elements of each claim or defense.
- iii. In all cases, motions addressing any evidentiary or other issues that should be resolved *in limine*; and
- iv. In any case where any party believes it would be useful, a pretrial memorandum.

**C. Filings in Opposition.** Unless otherwise ordered by the Court, any party may file the following documents within 1 week of the filing of any document described in section 3.B. above:

- i. Objections to the other party's proposed *voir dire* questions or requests to charge.
- ii. Opposition to any motion *in limine*.
- iii. Opposition to any legal argument made in a pretrial memorandum.

**D. Additional Submission in Non-Jury Cases.** At the time the joint pretrial order is filed, each party shall serve, but not file, the following:

- i. Affidavits constituting the direct testimony of each trial witness, except for the testimony of an adverse witness for whom a party has requested and the Court has agreed to hear direct testimony during the trial. Three business days after submission of such affidavits, counsel for each party shall submit a list of all affiants whom he or she intends to cross-examine at trial. Only those witnesses who will be cross-examined need appear at trial. The original affidavit shall be marked as an exhibit at trial.
- ii. All deposition excerpts which will be offered as substantive evidence, as well as a 1-page synopsis (with page references) of those excerpts for each deposition.
- iii. All documentary exhibits.

#### **4. Post-Trial Procedures**

Counsel are responsible for raising promptly any issue concerning the accuracy of transcripts certified by the Court Reporter to be used for purposes of appeal. Counsel perceiving an error that is material shall stipulate to the appropriate correction or, if agreement cannot be reached, shall proceed by motion on notice. Non-material defects in syntax, grammar, spelling or punctuation should be ignored.

#### **5. Default Judgments**

A party that wishes to obtain a default judgment must proceed by way of order to show cause. Follow the Default Judgment Procedure, attached hereto as Attachment A.

#### **6. Bankruptcy Appeals**

Briefs must be submitted in accordance with Federal Rule of Bankruptcy Procedure 8009. Counsel may extend these dates by stipulation submitted to the Court no later than 2 business days before the brief is due. The page limits in Rule 7.1(b) of the Local Civil Rules of the United States District Courts for the Southern and Eastern Districts of New York must be observed.

#### **7. Criminal Cases**

- A. Initial Matters.** Upon assignment of a criminal case to Judge Seibel, the parties shall immediately arrange with the Deputy Clerk for a prompt initial conference, at which the defendant will be present. The Assistant United States Attorney (“AUSA”) shall provide to chambers, as soon as practicable, a courtesy copy of the Indictment or Information, and a courtesy copy of the Complaint, if one exists.
- B. Guilty Pleas.** Guilty pleas will ordinarily be taken by Judge Seibel and are not assigned to Magistrate Judges by standing order. Permission for guilty pleas to be taken before a Magistrate Judge may be given in special circumstances. The AUSA shall provide a courtesy copy of the plea agreement to chambers as soon as practicable.
- C. Sentencing.** Follow the Procedures for Sentencings, attached hereto as Attachment B.

#### **8. Cell Phones and Personal Digital Assistants (“PDAs”)**

Attorneys may bring their cell phones and PDAs into the courtroom, but the devices must be turned off (not merely placed in vibrate mode or otherwise silenced). If an attorney needs access to such a device during a proceeding (such as when a subsequent appearance is being scheduled), permission to activate the device should be requested of the Court.

Attorneys may use their cell phones and PDAs in the hallway outside the courtroom (although not in the vestibule to the courtroom), but are asked to be discreet and to keep their voices down.

## ATTACHMENT A

### **DEFAULT JUDGMENT PROCEDURE**

1. Prepare an Order to Show Cause for default judgment and make the Order returnable before Judge Seibel in Courtroom 218 of the United States Courthouse, 300 Quarropas Street, White Plains, New York. Leave blank the date and time of the conference. Judge Seibel will set the date and time when she signs the Order.
2. Attach the following papers to the Order to Show Cause:
  - a. an attorney's affidavit setting forth:
    - i) why a default judgment is appropriate, including a description of the method and date of service of the original summons and complaint;
    - ii) whether, if the default is applicable to fewer than all of the defendants, the Court may appropriately order a default judgment on the issue of liability and/or damages prior to resolution of the entire action (see F.R.C.P. Rule 54(b));
    - iii) the proposed Statement of Damages and the basis for each element of damages including interest, attorney's fees, and costs; and
    - iv) legal authority for why an inquest would be unnecessary;
  - b. a proposed default judgment;
  - c. copies of all of the pleadings;
  - d. a copy of the affidavit of service of the original summons and complaint;
  - e. if failure to answer is the basis for the default, a Certificate from the Clerk of Court stating that no answer has been filed.
3. Take the Order to Show Cause with the attachments to the Clerk's Office (1st Floor, White Plains Courthouse) for approval.
4. After the Clerk approves the Order to Show Cause, the Clerk will bring the papers to Chambers (Rm. 275) for the Judge's signature.
5. After the Judge signs the Order, make two conforming copies of the Order and the attachments. Leave one copy with the Judge, and serve one copy on the defendant.

6. Prior to the return date, file the affidavit of service on the defendant of a conformed copy of the Order. For ECF cases, the affidavit of service must be filed electronically on the ECF system.
7. Prior to the return date, take the proposed judgment, separately backed, to the Clerk Office for the Clerks approval. The proposed judgment, including all damage and interest calculations, must be approved by the Clerk prior to the conference and then brought to the conference for the Judge's signature.

## **ATTACHMENT B**

### **PROCEDURES FOR SENTENCINGS**

Unless permission to the contrary has been obtained, every document in a sentencing submission, including letters, should be filed in the public record, either in paper form or through the ECF system, using the procedures described below. The defendant is responsible for filing all letters submitted on behalf of the defendant, including those from friends, relatives, etc. The Government is responsible for filing all letters from victims.

In this regard, the parties are referred to E-Government Act of 2002 and the Southern District's ECF Rules & Instructions, Section 21, Privacy and Public Access to ECF cases, ("Privacy Policy") and reminded not, unless necessary, to include the five categories of "sensitive information" in their submissions (i.e., social security numbers; names of minor children [use the initials only]; dates of birth [use the year only]; financial account numbers; and home addresses [use only the city and state]). Parties may redact the five categories of "sensitive information" and the six categories of information requiring caution (i.e., personal identifying numbers; medical records, treatment and diagnosis; employment history; individual financial information; proprietary or trade secret information; and information regarding an individual's cooperation with the government) as described in the Privacy Policy, without application to the Court. If any material is redacted from the publicly filed document, only those pages containing the redacted material will be filed under seal. Bring a copy of those pages to the sentencing proceeding, marked to indicate what information has been redacted from the publicly filed materials, to give to the Court for filing under seal.

1. A defendant's sentencing submission shall be served two weeks in advance of the date set for sentence. The Government's sentencing submission shall be served one week in advance of the date set for sentence. The parties should provide the Court with one courtesy copy of each submission when it is served. At the time it is served, a party shall file its sentencing submission following one of the two procedures described here.
  - a. Paper Filing. If the case is not electronically filed, letters must be filed as hard copies. A party shall group all letters together in a single paper filing under a cover marked SENTENCING MEMORANDUM with the caption and docket number clearly indicated and submit it to the Clerk's Office.
  - b. ECF Filing. If the case is electronically filed, letters must be filed electronically on the ECF system. A party shall group and file the letters together as attachments to a single document marked SENTENCING MEMORANDUM with the caption and docket number clearly indicated.
2. If a party redacts information beyond the eleven categories of information identified in the Privacy Policy, an application to do so must be served and filed at the time the sentencing submission is served. The application should clearly identify the redaction and explain the reasons for the redaction. The application will be addressed at the sentencing proceeding.

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3. If you have any questions about these procedures, contact the Courtroom Deputy Clerk, Alice Cama, at (914) 390-4077.